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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

NOTICE OF MOTION NO.1121 OF 2005
IN
SUIT NO.1655 OF 1994

Mrs.Suruchi Narayan Pethe).. Plaintiff

Versus

Yogesh J. Mehta and another).. Defendants

And

Vaibhav Apartments Co-op. Housing Society Ltd. and another).. Respondents

Mr.G.D. Utangale i/b.M/s.Utangale & Co. for the Plaintiff.

Mr.V.C. Ghosalkar for Respondent No.1.

Mr.Gaurav Kothari i/b.M/s.O.P.Soni for Respondent No.2

CORAM : SMT. NISHITA MHATRE, J.

DATED : 11TH JULY 2006

P.C.:

. The Plaintiff has filed the present Motion contending that she is entitled to certain injunctions restraining the Defendants and the Respondents pursuant to the order dated 16th March 2005 passed by the Assistant Registrar of the Co-operative Societies i.e. Respondent No.2 herein. The Plaintiff has filed Suit wherein she has sought a decree on the basis that she continues to be the exclusive owner of Flat No.73,

Vaibhav Co-op. Housing Society Ltd., S.K. Bole Road, Dadar (West), Mumbai 400 028 (hereinafter referred to as the "suit premises"). The Plaintiff has also sought a declaration that the agreement dated 23rd April 1991 executed by her and the Defendants is not an agreement of sale of the suit premises but one only for payment of security. Other reliefs are also sought in the Suit.

2. In my view, the Assistant Registrar, Respondent No.2 herein, cannot direct the Society to accept Defendant No.1 as a member when the present Suit is pending. The contention of the learned Advocate appearing for the Society that the Plaintiff should avail of the remedies under the Maharashtra Co-operative Societies Act is not correct. The lis between the Plaintiff and the Defendants is one which cannot be decided by the Assistant Registrar. The Assistant Registrar cannot, while this Suit is pending, decide the rights qua the Plaintiff and the Defendants.

3. Hence, Notice of Motion is allowed in terms of prayer (c) of the Motion.

4. Motion disposed off accordingly.